IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1170 OF 2002

IN

SUIT NO.4674 OF 1993

M/s.Plastrulon Processors Ltd. ...Appellant.

vs.

M/s.Arlabs Ltd. ...Respondent.

Mr.H.Tur with Mr.Shiralkar i/b. M/s.Shiralkar & Co., for Appellant.

None for Respondent.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 1st November,2007.

P.C.:-

1. This appeal is directed against the order dated 20.8.1999 passed in suit no.4674 of 1993 by the learned Single Judge of this Court. By that order, the learned Single Judge has decreed the suit in favour of the plaintiff, in the absence of any written statement being filed by the present appellant-defendant. It appears from the plaint that the plaintiff had purchased some pipes for Rs.43,463/- from the defendant. Because the pipes were defective, according to the plaintiff, the plaintiff suffered damages and therefore, the suit was filed for recovery of the price of the pipes and also for damages. Though the defendant was served, the defendant did not file any written statement, with the result the learned Single Judge of this Court by order dated 20.8.1999 decreed the suit and directed the defendant to pay an amount of Rs.4,04,309/- with interest at the rate of 12% per annum. The present appeal is directed against that

order.

2. Though no good grounds have been disclosed for not filing written statement in the Court after having served with the writ of summons, considering that the suit was basically for damages and the plaintiff has not led any evidence to show that the plaintiff had suffered damages in the amount that the plaintiff was claiming and also considering that the damages may be remote, and considering the willingness of the defendant to deposit the amount of Rs.1,20,000/- in the Court, in our opinion, the following order would meet the ends of justice:-

(1) On the defendant depositing in this Court within a period of eight weeks from today, an amount of Rs.1,20,000/- (Rupees One lakh twenty thousand only) with due intimation to the plaintiff, the decree and the order dated 20.8.1999 passed in Suit no.4674 of 1993 shall stand set aside.

(2) Thereafter, the defendant shall file its written statement within a period of eight weeks from

the date of deposit.

(3) The office thereafter, shall place the suit before the appropriate Court for further proceeding.

(4) The amount on being deposited shall be invested in fixed deposit in a nationalised bank to the credit of the suit.

(5) In case the amount is not deposited as directed above, the office shall treat this appeal as dismissed.

The appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)